IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.895 OF 2007
IN
NOTICE OF MOTION NO.128 OF 2007
IN
DINDOSHI COURT L.C.SUIT ST. NO.173/2007

Indira Social Welfare Sangh ..Appellant.
Vs.
Union of India, New Delhi & Ors. ..Respondents.

Mr.Anand Singh i/by M/s.M.P.Vashi & Associates , adv. for the Appellant.

Mr.Suresh Kumar, adv. for the Respondents.

CORAM : J.H.BHATIA, J.
DATE : NOVEMBER 27, 2007.

P.C.:

1. Heard the learned counsel for the Parties.

2. The plaintiff/appellant is an association of 71 persons, who claimed to be residing in the hutments on the railway property. According to them, they are in occupation of the said huts since before 1976. The railway authorities issued notice under Section 5A of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (In brief 'Public Premises Act'). The Estate Officer after hearing the parties had passed the final order of eviction on 24/3/2000. Thereafter the concerned 86 persons filed appeal, which also came to be dismissed and thus, the order has become final.

Seventy-one persons through the plaintiff filed the suit. Their main contention is that there were in all 110 occupants and out of them 29 persons, who were similarly situated and were living in the hutments by making tenements on the railway property, have been rehabilitated elsewhere. According to them remaining 71 persons also deserves to be treated equally and to be rehabilitated. According to them, the act of eviction without providing alternate accommodation is discriminatory and, therefore, the plaintiff sought injunction restraining the railway authorities and their employees from executing the notice dated 16-10-2007 and from demolishing 75 hutments of the members of the plaintiff association. The respondents contested the application denying that the Railway authorities had rehabilitated 29 persons. According to the respondents, those persons were rehabilitated by the State Government. Railways do not have any scheme for rehabilitation of the persons, who have made encroachment on the railway properties. It is contended that after dismissal of the appeals against the eviction order passed by the Estate Officer under the Public Premises Act, they have not challenged the same before the competent Court. Further it is contended that the suit itself is not tenable in view of the provisions of Public Premises Act as jurisdiction of the Civil Court is ousted. The

learned trial Court after hearing the parties rejected the application by the impugned order dated 3rd November, 2007. Therefore, the plaintiff has filed this appeal against the said order.

3. Mr.Sureshkumar the learned counsel for the respondents pointed out that the railway authorities have no policy for rehabilitation of unauthorised occupants removed from railway land or premises. According to him the scheme or the policy of the State Government to rehabilitate unauthorised occupants is not binding on the railways. He also contended that the members of the plaintiff/association has no legal right, title or interest over the lands of the railways and, therefore, they are not entitled to any relief. On the other hand, Mr.Vashi contended that shelter is one of the basic needs of the humanbeings and, therefore, it is the fundamental right of the citizens under Article 21 of the Constitution. In support of this he placed reliance upon **Shantistar Builders v. Narayan Khimalal Totame and others AIR 1990 Supreme Court 630**, wherein the Supreme Court laid down certain guide-lines about the disposal of the excess land under the Urban Land (Ceiling and Regulation) Act, 1976 and therein it was observed that certain percentage of such excess land should be reserved for weaker sections. In my considered opinion, that authority is not applicable

to the present case because it is not the case where excess land is declared under the Urban Land (Ceiling and Regulation) Act nor the Railways had prepared any scheme for accommodation of the people who had made encroachment on the railway properties. Mr.Sureshkumar placed reliance upon number of authorities in support of his contention that the railway authorities can not be compelled to provide alternate accommodation to the encroachers. In **Milk Producers Association, Orissa and others v. State of Orissa and others (2006) 3 Supreme Court Cases 229,** Their Lordships made following observations in paragraph 2.

> "2. The appellants herein carry on business in milk. They have admittedly encroached upon government lands in the town of Bhubaneshwar. The State of Orissa intended to evict them. The Chief Minister of the State of Orissa evolved a scheme allegedly for their rehabilitation. The villages selected for carrying out such rehabilitation job were not found to be suitable therefor. As they are sought to be evicted without offering them alternative plots, the appellants filed writ petitions before the Orissa High Court. In the writ petitions it was, inter alia, averred:
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> "4. That since most of these petitioners belong to the poorer strata of the society, their rehabilitation have engaged attention of the authorities at the highest level since the year 1987. In a meeting held on 1-6-1987 under the Chairmanship of the Chief Secretary, it was decided that sites for such rehabilitation of gowallas operating within Bhubaneshwar city shall be selected by a committee consisting of Director of Veterinary Services; representatives of OMFED; ADM, Bhubaneswar; SDO, Bhubaneswar and representative of

> Bhubaneswar Development Authority. The minutes of the meeting held on 1-6-1987 was sent to Chief Secretary; Secretary, Finance Department; Special Secretary; General Administration Department; Secretary, Forest and Animal Husbandry Department; Secretary, Revenue Department; Secretary; Housing and Urban Development Department; Vice-Chairman, Bhubaneswar Development Authority, etc.; vide Letter No.9838/CA dated 14-7-1987 by the Joint Secretary to Government in the Department of General Administration, Govt. of Orissa and exofficio Director of Estates."

4. From this it is clear that unless there is scheme of the Government in existence for rehabilitation, no person, who may encroach on the public properties has a legal right to be rehabilitated. In **Samadhan S. Umbarkar & Ors. v. The General Manager & Ors** Writ Petition No.2584 of 2002 with the similar facts, the Division Bench of this Court by order dated 12th December, 2002 dismissed the writ petition holding that the respondents had come out with specific case that the policy of the State Government for rehabilitation is not applicable to the respondents. In **Deepak S. Kadam & Ors. v. Union of India & Ors.** Writ Petition No.3102 of 2002, also the Division Bench of this Court took the similar view that the Central Government lands are not covered under the State Government policy.

5. First of all, this is not a writ petition invoking the fundamental powers of the Article 21 of

the Constitution wherein the direction to the State Government is sought to provide shelter to the shelterless peoples. This being the civil suit, the civil Court will have to first consider whether the plaintiffs have any legal right or title over the property. In absence of any such right, they can not get any relief from the civil Court. Secondly, in the first round of litigation, eviction notice was issued by the Estate Officer under the Public Premises Act and on hearing the parties, eviction order was passed. That order was challenged in appeals and the appeals were also dismissed. In view of provisions of Section 10 of the Public Premises Act, 1971, the said order of the Estate Officer and the appellate officer shall become final and no injunction shall be granted by any Court or any other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the said Act. This excludes the jurisdiction of the civil Court to pass any order, which would be tantamount to injunction against the order passed by the authorities under the Public Premises Act. Section 15 of the said Act specifically excludes the jurisdiction of the Civil Court in respect of matters of eviction, removal, demolition, etc. under the said Act. In view of this, I find no fault in the impugned orders passed by this Court rejecting the notice of motion and prayer for injunction.

6. Appeals stand dismissed. Order of the status-quo stands vacated.

[J.H.BHATIA, J.]